

Decision 02-10-064 October 24, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Authority, Among Other Things, to Increase
Rates and Charges for Electric and Gas Service
Effective on January 1, 1999.

(U 39 M)

Application 97-12-020
(Filed December 12, 1997)

Investigation into the Reasonableness of
Expenses Related to the Out-Of-Service Status of
Pacific Gas and Electric Company's El Dorado
Hydroelectric Project and the Need to Reduce
Electric Rates Related To This Non-Functioning
Electric Generating Facility.

Investigation 97-11-026
(Filed November 19, 1997)

Application of Pacific Gas and Electric Company
for Authority, Among Other Things, to Decrease
its Rates and Charges for Electric and Gas
Service, and Increase Rates and Charges for
Pipeline Expansion Service.

Application 94-12-005
(Filed December 9, 1994)

Order Instituting Investigation Into Rates,
Charges, and Practices of Pacific Gas and Electric
Company.

Investigation 95-02-015
(Filed February 22, 1995)

**OPINION ON EL DORADO HYDROELECTRIC PROJECT ISSUES
(EL DORADO PHASE)**

1. Summary

In connection with the test year 1999 general rate case (GRC) of Pacific Gas and Electric Company (PG&E), the Commission approves an uncontested settlement (Settlement Agreement) resolving pending ratemaking issues related to the outage of PG&E's 21-megawatt El Dorado hydroelectric generation project. Pursuant to the Settlement Agreement, a total adjustment of \$810,000 plus associated interest will be credited to PG&E's Transition Cost Balancing Account (TCBA). The El Dorado Phase of this GRC is concluded.

2. Background

Decision (D.) 00-02-046, issued in February 2000, resolved most of the issues in PG&E's test year 1999 GRC while leaving certain issues open for further consideration. Ordering Paragraph 21 of D.00-02-046 provided that this GRC shall remain open pending disposition of, among other things, El Dorado Project ratemaking issues. Those issues were included in this GRC pursuant to the Commission's order instituting investigation (I.) 97-11-026, an inquiry into the out-of-service status of the El Dorado Project and whether electric rates related to that project should be reduced. The Commission issued I.97-11-026 after PG&E notified the Commission that the El Dorado Project had been out-of-service for nine consecutive months as a result of damage to the project from the January 1997 New Year's storm. In accordance with Public Utilities Code Section 455.5(c), the investigation was consolidated with PG&E's GRC proceeding.

As more fully explained in D.00-02-046, testimony and hearings on the issues addressed by I.97-11-026 were deferred pending disposition of Application (A.) 98-04-016. In that application PG&E sought authority to sell the El Dorado Project to the El Dorado Irrigation District. Approval of the sale was granted by D.99-09-066 dated September 16, 1999.

D.00-02-046 directed parties to file prehearing conference statements addressing the El Dorado Project issues in this GRC. It also directed the Administrative Law Judge (ALJ) to set a prehearing conference to identify and establish a schedule for consideration of all remaining El Dorado Project issues. In a series of rulings issued on March 7, 2000, April 7, 2000, April 25, 2000, and May 25, 2000, the ALJ extended the date for filing of prehearing conference statements, established the El Dorado Phase of this GRC, directed PG&E to serve prepared testimony responsive to I.97-11-026, determined that PG&E and the Office of Ratepayer Advocates (ORA) are the only parties in the El Dorado Phase, addressed the scope of the El Dorado Phase, established the schedule for ORA's prepared testimony and PG&E's rebuttal testimony, and set an evidentiary hearing.

On September 26, 2000, prior to the submission of rebuttal testimony and the commencement of the scheduled evidentiary hearings on El Dorado Phase issues, PG&E and ORA filed a joint motion requesting approval of the Settlement Agreement and suspension of the procedural schedule. The ALJ removed the hearings from the Commission calendar. In this decision we consider the proffered Settlement Agreement, a copy of which is attached.

3. Summary of the Settlement Agreement

In its prepared testimony, PG&E recommended that no adjustment be made to its authorized revenue requirement as a result of the El Dorado Project outage. In the alternative, PG&E estimated that a maximum capital-related revenue requirement of \$375,000 could be subject to refund. In its prepared testimony, ORA recommended that \$738,000 for the capital-related revenue requirement and \$693,000 for expense-related revenue requirement, plus interest and associated tax benefits, be refunded to ratepayers.

Upon completion of their settlement discussions, PG&E and ORA (Settling Parties) have agreed upon the following:

1. The reasonable total adjustment to electric rates resulting from the investigation is \$810,000, plus associated interest, to be credited to the Revenue Section of the TCBA on a one-time basis upon adoption of the Settlement Agreement.
2. The Settling Parties agree that the Commission should find that it is reasonable for PG&E to credit the TCBA for \$810,000 plus interest as a result of this investigation. Interest will accrue at the 90-day commercial paper rate, calculated on a principal balance of \$510,000 beginning January 1, 1998 through December 31, 1999, and on the principal balance of \$810,000 from January 1, 2000 through the date the amount is credited to the TCBA. Although compromises were reached on several issues, the final settlement amount cannot be tied to specific outcomes for individual issues.
3. The one-time TCBA credit will be made upon the Commission's adoption of the Settlement Agreement.

4. Discussion

We first evaluate the Settlement Agreement according to the preconditions for all-party settlements adopted in D.92-12-019, 46 CPUC 2d 538, 550-551. As set forth in that decision, the Commission has indicated its willingness to adopt settlements if it is satisfied (1) that the settlement commands the unanimous sponsorship of all active parties, (2) that the sponsoring parties are fairly reflective of the affected interests, (3) that no term of the settlement contravenes statutory provisions or prior Commission decisions, and (4) that the settlement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

We find that the Settlement Agreement meets the Commission's stated preconditions for consideration of an all-party settlement. PG&E and ORA are

the only parties in the El Dorado Phase of this GRC, and their joint sponsorship of the settlement is unanimous. PG&E represents the interests of shareholders, and ORA represents the interests of consumers of electricity in PG&E's service territory. The Settling Parties also maintain that they represent the safety interests of the general public and of PG&E's workers. They are aware of no statutory provision or prior Commission decision that would be contravened or compromised by the Settlement Agreement, nor are we aware of such statute or decision. Finally, the Settlement Agreement includes sufficient information to permit the Commission to discharge its future regulatory obligations by clearly establishing the one-time adjustment that will be credited to the TCBA.

In accordance with Rule 51.1(e) of the Rules of Practice and Procedure, we also review the Settlement Agreement to determine whether it is reasonable in light of the whole record, consistent with the law,¹ and in the public interest.

Taking into account each party's risk that its recommendation would not prevail, the agreed upon adjustment of \$810,000 plus interest falls within the range bounded by PG&E's litigation position, i.e., that no adjustment be made or, alternatively, that a maximum capital-related revenue requirement of \$375,000 be subject to refund, and ORA's litigation position, i.e., a total adjustment of \$1,431,000 plus interest. In addition, we note that the Settlement Agreement was reached after the parties made their respective showings and recommendations, and after full opportunity for parties to conduct discovery to gauge each other's position. We are also satisfied that the parties' counsel and advocates are experienced in public utility litigation and that the settlement negotiations were

¹ As noted earlier, the Settling Parties are aware of no statute or Commission decision that would be compromised or contravened by the Settlement Agreement.

conducted at arm's length and without collusion. Approval of the Settlement Agreement will spare the Commission and the parties the effort required to litigate complex issues. Finally, it addresses and resolves all of the major issues in the El Dorado Phase of this proceeding. For all of the foregoing reasons we conclude that the Settlement Agreement is reasonable in light of the whole record.

The Settlement Agreement is in the public interest in that it furthers public policy favoring the settlement of disputes to avoid costly and protracted litigation. The principal public interest affected by this proceeding is the delivery of safe, reliable electric service at reasonable rates. The Settlement Agreement advances this interest by requiring PG&E to credit \$810,000 plus interest to the TCBA.

5. Assignment of Proceeding

Carl Wood is the Assigned Commissioner and Mark Wetzell is the assigned ALJ in this proceeding.

6. Draft Decision

The ALJ's draft decision was issued in accordance with Public Utilities Code Section 311(g). With respect to the El Dorado Phase of this GRC, this is an uncontested matter in which the draft decision grants the relief requested. Pursuant to Rule 77.7 (f)(2) of the Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment on the draft decision is being waived.

Findings of Fact

1. The Settlement Agreement meets the preconditions for favorable consideration of all-party settlements enumerated in D.92-10-019.

2. The agreed upon adjustment of \$810,000 plus interest falls within the range of PG&E's recommendation that no adjustment be made (or, alternatively, that a maximum capital-related revenue requirement of \$375,000 be subject to refund), and ORA's recommendation for a total adjustment of \$1,431,000 plus interest.

3. The Settlement Agreement was reached after the parties made their respective showings and recommendations, and after full opportunity for parties to conduct discovery to gauge each other's position.

4. The parties' are experienced in public utility litigation, and the settlement negotiations were conducted at arm's length and without collusion.

5. Approval of the Settlement Agreement will spare the Commission and the parties the effort required to litigate complex issues.

6. The Settlement Agreement addresses and resolves all of the major issues in the El Dorado Phase of this proceeding.

7. It is reasonable for PG&E to credit the TCBA for \$810,000 plus interest as a result of this investigation.

Conclusions of Law

1. The Settlement Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest.

2. The Settlement Agreement should be approved and implemented according to the terms and conditions set forth therein.

3. The El Dorado Phase of this GRC should be closed, but the GRC proceeding should remain open to resolve other pending issues in these consolidated dockets.

O R D E R

IT IS ORDERED that:

1. The September 26, 2000 *Settlement Agreement Among Pacific Gas and Electric Company and The Office of Ratepayer Advocates Resolving All Issues in The El Dorado Order Instituting Investigation (Investigation No. 97-11-026)*, a copy of which is attached to this order, is approved and shall be implemented according to the terms and conditions set forth therein.

2. The final results of operations analysis to be performed pursuant to the Commission's order in Decision 01-10-031, at p. 45, shall reflect and incorporate as appropriate the adjustment set forth in the settlement agreement approved by Ordering Paragraph 1.

3. The El Dorado Phase of these proceedings is closed; however, these proceedings shall remain open pending disposition of other matters.

This order is effective today.

Dated October 24, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

CARL W. WOOD

GEOFFREY F. BROWN

MICHAEL R. PEEVEY

Commissioners